

Opinion | Who's the Snowflake Now?

David French

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You're reading the David French newsletter. Reflections on law and culture, war and peace, and the deeper trends that define and divide America.

It's one of the [worst videos](#) of the Trump era, and that's saying something.

You see a young Muslim woman dressed warmly for early spring walking down the street when she's approached by a man in civilian clothes. She shouts as he places his hands on her. At that moment, a second man in civilian clothes arrives and appears to pull out a badge. Within moments she's surrounded by plainclothes officers.

They handcuff her and take her away.

If the video had recorded the arrest of a violent criminal, it wouldn't be shocking at all. It would look benign, relatively peaceful even. But you're not watching the arrest of a violent criminal. Instead, it's the arrest of a Turkish graduate student at Tufts, Rumeysa Ozturk, who had been lawfully present in the United States on a student visa.

And why was she arrested? For helping to write an op-ed. That's the reason for the swarm of officers and the handcuffs. [You can read it here](#). She was one of four authors, and they called for the university to "acknowledge the Palestinian genocide, apologize for University President Sunil Kumar's statements, disclose its investments and divest from companies with direct or indirect ties to Israel."

I don't agree with the op-ed, but no rational person could read it and find anything legally problematic about it. It was political speech that rests at the core of the First Amendment. In fact, if the free speech clause means anything, it means that each of us has the right to engage in political argument, no matter if our views are radically fringe, comfortably mainstream or something in between.

This is basic stuff. Every public official in the United States should understand this fundamental civic and constitutional fact.

Not only was she detained, but the Trump administration sought to deport her, to kick her out of the country for expressing a view it did not like.

This action caused a stir in March of 2025 when she was arrested and was so blatantly oppressive that at first I struggled to accept that it was real. Surely, I thought, there is more to the story. Surely, I thought, she broke the law in some other way. Not even in my worst-case scenario of a Trump presidency did I think our government would snatch people off the streets for co-writing an op-ed.

But it was real. The administration did try to deport her [on that basis alone](#). Judge William Sessions, who ordered her release on bail after she'd endured weeks of detention, said, "There is no evidence here as to the motivation, absent the consideration of the op-ed."

I'm writing about Ozturk now because just last week Noël Wise, a federal judge in California, [issued a declaratory judgment](#) striking down as unconstitutional the federal statutes that the Trump administration used to target Ozturk and hundreds of other student visa holders, at least to the extent that enforcement is

based on protected speech.

The court did not issue an injunction, and the administration will almost certainly appeal, but the legal blow still stings — and it provides a clear legal road map for future rulings at every level of the federal judiciary.

Judge Wise isn't the only judge to rule against the administration's efforts. She relied on the factual findings in [American Association of University Professors v. Rubio](#), in which Judge William Young found that the administration is "engaged in a mode of enforcement leading to detaining, deporting, and revoking noncitizens' visas solely on the basis of political speech, and with the intent of chilling such speech and that of others similarly situated."

"Such conduct," Judge Young wrote, "is not only unconstitutional, but a thing virtually unknown to our constitutional tradition."

The administration's conduct was shocking. Relying heavily on research from a pro-Israel group called the Canary Mission, the administration reviewed a list of approximately 5,000 people who were involved in protests related to Israel. The administration formed a so-called Tiger Team to review the list, ultimately whittling it down to roughly 100 to 200 individuals who were to be investigated further.

Deporting student visa holders who actually engaged in illegal activity — as some protesters did — would not be legally or morally problematic, especially if they violated the rights of other students by engaging in anti-Semitic harassment, but the administration's dragnet was far more broad than that.

In fact, John Armstrong, an official within the State Department's Bureau of Consular Affairs, testified under oath in *American Association of University Professors v. Rubio* that he believed in some cases the administration could target for deportation those who chanted, "From the river to the sea, Palestine will be free," people who condemned Zionism, those who called for an arms embargo against Israel, and those who call Israel an apartheid state.

I disagree strongly with each of those positions, and I would gladly debate any of them on the merits. But I also know that they're clearly protected by the First Amendment. I know that binding Supreme Court authority has long held that immigrants enjoy free speech rights in this country, and (as I've said countless times), if you only defend speech you like, you don't believe in free speech.

Making matters worse, the administration was acting under statutes that gave Marco Rubio, the secretary of state, remarkable power to deport visa holders. For example, [one statute](#) allows the secretary of state to deport a noncitizen when he "personally determines" his or her activities "compromise a compelling United States foreign policy interest."

[Another statute](#) is even more broad. It gives the secretary of state the authority "at any time, in his discretion" to "revoke" a "visa or other documentation."

The use of unchecked executive authority to punish political speech is virtually the dictionary definition of "un-American" — or at least it ought to be. And yet the combination of congressional recklessness, Rubio's authoritarianism and MAGA's malice has brought us to this point: where a young woman is snatched off the street for the offense of wrongspeak.

Almost as disturbing as the administration's actions was the right wing's reaction to the judge's ruling. My old friends at the Foundation for Individual Rights and Expression (I'm a former president of the organization) brought the case, and when they announced the victory, they were flooded with anger.

Stephen Miller, one of the president's closest advisers, condemned the ruling [with his typical hysteria](#). "A district court judge says America must admit and keep foreigners who hate America and hate Americans," he wrote on X. "Court-ordered civilizational suicide. It will not stand."

Miller was hardly alone in his fury. The very idea that noncitizens enjoyed constitutional rights was considered an anathema.

William Jacobson, a clinical law professor at Cornell Law School and the founder of the right-wing Legal Insurrection blog, [wrote on X](#), “The issue of whether the Constitution is a suicide pact is being forced and is one that can’t be avoided in the face of foreign jihadists coming here to destroy us — can we withstand foreign subversion by people here on visas or is it all just free speech?”

Ben Shapiro, the co-founder of The Daily Wire, [wrote on X](#) that “we should deport people who hate America and aren’t citizens.” He said on his podcast that “the administration is making precisely the correct moves on this front.”

The problem, however, is that these statements contradict the founding ethos of the American Republic, the text of the Constitution and the intentions of America’s founders.

Let’s start with the [magnificent words](#) of the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

Note that it does not say that all *Americans* are created equal. The reason for that is simple — the American experiment is rooted in the idea of universal human dignity, not in national chauvinism. We are a nation with borders, of course — and our Constitution does not rule the world — but when you are a human being within the borders of the United States, there are human rights that attach to you that you do not lose simply because you’re a visitor or an immigrant.

This reality is [reflected in the text](#). The First Amendment itself isn’t confined to citizens. It contains instead a blanket prohibition against Congress enacting any laws that abridge the freedom of speech, and in multiple other provisions, the Constitution refers to the rights of persons, not just citizens.

The Fifth Amendment, which Judge Wise also relied on in her ruling, protects any “person” from the loss of life, liberty, or property at the hands of the federal government without due process of law. The 14th Amendment’s due process provision also protects any “person” from state violations of due process.

The Sixth Amendment grants the “accused” the right to a jury trial and to the assistance of counsel. Other protections of the Bill of Rights are written as blanket bans, such as the Eighth Amendment’s ban on cruel and unusual punishment.

And don’t think the drafters of the Constitution or any of its amendments didn’t know how to write the word “citizen.” The 14th Amendment protects the “privileges or immunities” of “citizens,” even as it protects the due process rights of any “person.”

The administration’s actions bring to mind the shameful [Alien and Sedition Acts](#) of 1798, which imposed criminal penalties for “false, scandalous and malicious writing” against the government and empowered the president to deport any alien he deemed “dangerous to the peace and safety” of the United States.

Thomas Jefferson, the principal author of the Declaration of Independence, and James Madison, the principal author of the Bill of Rights, thought the Alien and Sedition Acts were scandalous.

In a compelling article about the “[deportation of dissent](#),” Jacob Mchangama, the founder of the think tank The Future of Free Speech, and Hiram Maramba, a research assistant, wrote that Jefferson called the Alien Act “a most detestable thing.” It was “worthy of the eighth or ninth century.” He warned against targeting “the friendless alien” and said “the citizen will soon follow.”

Trump has proved Jefferson correct. Trump’s campaign against free speech has targeted immigrant and citizen alike.

Madison waxed even more eloquent. He said that the laws' sweeping and vague provisions "can never be mistaken for legal rules or certain definitions" and that "they leave everything to the President. His will is the law."

Mchangama quotes a key passage from Madison's [Report of 1800](#), and it's worth reproducing in full:

"If the banishment of an alien from a country into which he has been invited, as the asylum most auspicious to his happiness; a country, where he may have formed the most tender of connections, where he may have vested his entire property ... where he enjoys under the laws, a greater share of the blessings of personal security and personal liberty, than he can elsewhere hope for, ... if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied."

It is certainly true that the founders were not united on this point. Alexander Hamilton supported the enforcement of the acts, for example, but when it comes to understanding the nature of the American experiment and the meaning of the Bill of Rights, the founders are not weighted equally. Jefferson's and Madison's views demand immense respect — especially when their words are consistent with the text of the documents they wrote.

It is no wonder, then, that the Supreme Court has thus far sided far more with Jefferson and Madison than it has with Hamilton. In a 1945 case called [Bridges v. Wixon](#), the court said, "Freedom of speech and of press is accorded aliens residing in this country," and blocked the government's attempt to deport an Australian union organizer on the basis that he was affiliated with the Communist Party.

"So far as this record shows," Justice William Douglas wrote for the majority, "the literature published by Harry Bridges, the utterances made by him were entitled to that protection. They revealed a militant advocacy of the cause of trade unionism. But they did not teach or advocate or advise the subversive conduct condemned by the statute."

So far I've mainly addressed the law and the philosophy of the founding, but there's something else that bothers me about all this. Does the Trump administration really believe that our nation is so fragile — and public debate so perilous — that a few hundred undergrads and grad students can destabilize our nation with their speech?

Please take another look at [Ozturk's op-ed](#). That's dangerous? She and her co-authors made a short, civil written argument. If you disagree, can you not rebut it? Is that expression so terrifying that it demands deportation?

The idea that protecting provocative speech by visitors and immigrants renders the Constitution a "suicide pact" might be one of the most absurd examples of snowflakery I've ever seen in my life.

Millions of Americans share the views that thousands of student immigrants have expressed, and when you view those ideas as dangerous enough for deportation, we are foolish to believe — just as Jefferson warned — that only immigrants will face the administration's wrath.

Some other things I did

As a longtime Tennessean, Dolly Parton's death hurt my heart. America loved Dolly, but I dare say Tennessee loved her the most, and in my Sunday column I tried my best to describe why:

I was in Nashville when Dolly Parton died. I found out from my son. He texted the news to our family group chat in all capital letters.

Grief washed over me.

Dolly might have been the most beloved living American, but in Tennessee she was something different. In this state, she just meant more. One of my students, a young woman, said, “This must have been what it was like in London when the queen died.” And she was not alone.

I wasn’t in London when Queen Elizabeth II died, so I can’t know, but when my student said that, I knew what she meant. Dolly’s death was a seismic emotional moment.

It’s not because she was famous and successful and this was her home. Nashville is used to fame. And it’s not because she never forgot her roots. A central theme of country music is “Don’t forget your roots.”

It’s because she loved us. Unconditionally. Extravagantly.

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